

# **PROGRESS REPORT**

## **Comm 47 CODE ADVISORY COMMITTEE**

DATE: Wednesday, May 22, 2002

TIME: 9:00 a.m. – 3:00 p.m.

LOCATION: Tommy G. Thompson Commerce Center  
201 West Washington Avenue  
Madison, Wisconsin

### **COMMITTEE MEMBER ATTENDANCE:**

Dave Blatnik	P	Mark Maten	P
Richard Blatter (Gary Manke)	P	Kevin Olson	P
Tim Clay	P	Robert Pearson	A
Kelly Cochrane	P	Boyd Possin	P
Sean Dilweg	P	Tom Reinsch	P
Scott Hafner	P	Dick VanGrinsven	P
David Havick	P	Scot Wilson	P
Sally Kefer	P		

### **GUESTS:**

Troy Batzel – Kwik Trip, Inc.	Jim Hutchens – Tetra Tech, Inc.
Kendra Bonderud – Legislative Fiscal Bureau	Jerry Jones – US Bank, Inc.
Sarah Decorah – Petroleum Marketers of Wisconsin	George Marek – Quarles & Brady, LLP
Ray de Long – REI, Inc.	Steve Oseseck – Envirogen, Inc.
Don Gallo – ReinHart Boerner Van Deuren	Dave Scherzer – Sigma, Inc.
Brian Hinrichs – Liesch Environmental Services, Inc.	Mark Tusler – BT <sup>2</sup> , Inc.

### **DEPARTMENT OF COMMERCE STAFF:**

Cathy Cliff	Jim Quast
Dennis Legler	Sam Rockweiler

Dennis Legler opened the meeting with a review of the agenda and a round of introductions.

### **Committee responsibilities and ground rules**

Cathy Cliff asked the committee members to seek input and comments from the groups they represent, for inclusion in the Committee's discussions and in the development of code revisions. Cathy noted the Department's three main goals in administering Comm 47 are to protect the environment, protect the integrity of the Petroleum Environmental Cleanup Fund, and protect the financial interests of the owners and operators who participate in the Comm 47 program. Cathy explained that the scope of the Committee's work and the associated code revisions would not include changes to chapter Comm 46 or the NR 700 series.

Dennis distributed and discussed ground rules for the committee meetings, and noted the agendas and progress reports for the meetings would be posted on the Department's Web site.

Jim Quast explained the Committee would likely develop concepts for changes to Comm 47, and staff would then develop the detailed code language for the Committee's review. Jim added the Committee has an advisory role, but the Department will seriously consider any recommendations from the Committee.

Sam Rockweiler explained the Committee would receive drafts of code changes for discussion and input prior to public hearings for the changes. The resulting hearing testimony and departmental response, including draft changes to the hearing draft, would likely be reviewed with the Committee for further input prior to legislative review.

### **Program history and background**

Dennis summarized how the statutory requirements for the PECFA program have frequently changed over the last several years, and noted various portions of Comm 47 need to be updated to be consistent with the newer requirements.

Dennis reported six groups within the Department are analyzing six subject areas of Comm 47: How entry into the Comm 47 process begins, regulation of participating consultants, eligible and ineligible costs, usual and customary costs, competitive bidding, and auditing and due process. Cathy explained that presenting the output from these groups to the Committee should expedite the Committee's discussions and input for updating Comm 47.

### **Code development process and timeline**

Sam distributed and discussed an overview of the code development process, with emphasis on the portions that are statutorily prescribed. To illustrate the corresponding chronology of events that lead

to a code change becoming effective, Sam distributed a draft timeline for Comm 47, which included an estimate of seven meetings of the Committee and a potential effective date of August 1, 2003, for the resulting code changes.

Don Gallo asked how the code development timeline differs for emergency rules. Sam explained emergency rules usually become effective upon publication in the official state newspaper, rather than after public hearings and legislative review, but then expire in less than a year unless replaced by permanent rules that are processed through hearings and legislative review. Boyd Possin asked whether emergency rules should be developed to quickly make Comm 47 consistent with the various statutory changes enacted over the past several years. Cathy and Sam explained adoption of emergency rules cannot occur before demonstrating the rules are needed to protect public health, safety or welfare in response to an emergency; and explained that statutory changes which occurred several or more months in the past are generally not believed to be emergencies.

### **Stakeholder concerns with current code**

Jim Quast initiated an exercise of having each member and guest summarize their concerns and problems with the PECFA program, and then having the group as a whole categorize and prioritize the concerns and problems. Nine categories resulted: bidding, new concepts, consistency and clarification, communication, financing, deductibles, eligible and ineligible costs, appeals, and claims. Dennis agreed to have all the concerns and problems and corresponding prioritization recorded, and to circulate the results by email to the Committee prior to the next meeting. Don Gallo and Scot Wilson commented members could in turn provide further analyses of individual concerns or problems. Jim explained the list of concerns and problems could serve as a checklist for the project.

Cathy commented the concerns were similar to and consistent with the concerns raised so far by the six internal staff groups. Dennis noted the internal groups are also looking for internal administrative processes that cause problems and should be improved.

Boyd asked whether the Committee could also develop and recommend changes to statutory requirements that are causing problems. Cathy explained that the Committee, as an advisory body to the Department, can recommend to the Department that specific statutory changes be made, and any recommended changes relating to budgetary topics could possibly be included in the budget request the Department will send to the Department of Administration in early fall.

Several questions and comments relating to statutory requirements arose. For claim appeals, Don Gallo suggested exploring whether mediation is precluded by the statutory provisions for arbitration. Dave Blatnik questioned whether the statutes prohibit the Department from timing remediation at a site. Boyd suggested increasing the statutory threshold for competitive bidding from \$60,000 to \$80,000. Tom Reinsch indicated the statutory limits on reimbursing interest costs could be reconsidered. Sally Kefer suggested reconsidering whether the statutory requirement for annual reviews is needed.

### **Election of chairperson**

The committee decided by acclamation that Dennis Legler should be the chairperson.

### **Next Meeting**

The next meeting was scheduled for June 26, 2002, at the same location and time.

*Submitted by Sam Rockweiler, code consultant to the Committee  
Comm 47/progress report1b*